

Uphold Corporate Governance to Fight Corruption

奉行良好企業管治 打擊商業貪污舞弊

Hong Kong Business Ethics Development Centre
Independent Commission Against Corruption
廉政公署香港商業道德發展中心



A clean business environment that fosters fair competition and engenders investor confidence is a cornerstone of Hong Kong's continued success. However, top management of listed companies may sometimes underestimate corruption risk, which will not only cause financial losses but also damage the company's long-term interest and sustainability. Corruption risk exists in day-to-day operations (such as procurement, sales and marketing, and accounting functions, etc) and can be more salient as a company prepares for listing and undergoes mergers and takeovers. Company directors are under fiduciary duties to protect the interest of shareholders and exercise their powers with reasonable care, skill and diligence. Among others, they should uphold the highest standard of personal integrity, implement strong governance practices and take the lead to cultivate an ethical culture within their companies.

A few ICAC cases connected to listed companies have shown that some company directors failed to fulfil their duty in protecting company interests and upholding corporate governance standards. In some extreme cases, senior executives were found to be involved in corporate corruption, fraud and other malpractices.

Guardians' Role Compromised Due to Corruption

In a recent ICAC investigation, a former

executive director and a former financial controller-cum-company secretary of a listed company were found to be involved in bribery over the sale of the company's business to cover up certain non-compliance with listing regulations.

The listed company planned to sell its subsidiary's business to the former executive director. However, the plan was shelved after the financial controller found that such disposal would constitute a connected transaction under the Stock Exchange Listing Rules and therefore require advice from an independent financial adviser and approval from independent shareholders.

In the following year, the listed company was informed that an independent third party offered to acquire the concerned business at HK\$15 million. The transaction was reported as non-connected and approved at a board meeting. However, the facts showed that the former executive director arranged his relative to act as the purported purchaser. He also offered company shares worth over HK\$330,000 to the financial controller for the latter to process and conceal the connected transaction by presenting to the board a false statement.

The duo were found guilty of offering and accepting an advantage under the Prevention of Bribery Ordinance (Cap.201) (PBO). They were further convicted of conspiracy to use document to deceive their principal under the same Ordinance.

The court sentenced them to jail for 2 years and 15 months respectively and disqualified them from being company directors from 5 to 7 years.

Anti-corruption Laws in Hong Kong

Bribery in the private sector is governed by Section 9 of PBO which aims to maintain fair play in the business environment and proscribe acts breaching agents' fiduciary duties to their principals. Section 9(1) of PBO prohibits the solicitation and acceptance of advantage by an agent (e.g. an employee or a director of a company) in connection with his principal's business whereas Section 9(2) of PBO criminalises the offering of such advantage to an agent. It is also an offence under Section 9(3) of PBO for an agent to use documents with intent to deceive his principal.

Broadly speaking, an advantage is defined in the Ordinance as anything of value except entertainment. Apart from cash, the offering of company shares, convertible bonds, an advisory position or other special favours could also constitute advantage. The maximum penalty for committing Section 9 offences of PBO is a fine of HK\$500,000 and an imprisonment of seven years.

Ethics Promotion Programme for Listed Companies

With an aim to promulgate the important roles of company directors and professionals in ensuring good governance and


sustaining an ethical culture in listed companies, the Hong Kong Business Ethics Development Centre (HKBEDC) of the ICAC launched a three-year Ethics Promotion Programme for Listed Companies (Programme) in 2015 in collaboration with 18 co-organisers, including The Hong Kong Institute of Directors.

Under this Programme, HKBEDC has developed a training package “**Compliance and Beyond**” which consists of a case study and three training videos featuring ethical challenges pertaining to daily operations, prelisting and merger and takeover stages of listed companies. The scenarios in the training package highlight the important role of company directors, including independent non-executive directors (INEDs), in protecting the interests of listed companies and their shareholders. The package also features corruption issues in cross-boundary operation, fraud, conflict of interest, backdoor listing and insider dealing, etc. Useful reference materials

including **Toolkit on Directors’ Ethics and Corruption Prevention Guide for Listed Companies** are also available for management of listed companies to understand ethical challenges at stake and their ramifications. Listed companies may also subscribe to corruption prevention and education services provided by the ICAC, which could be tailored to help them enhance internal controls and implement ethics training programmes. More details can be found at www.hkbedc.icac.hk/lc.

Protagonists of Ethical Leadership

With effect from the 2016 financial year, the Environmental, Social and Governance Reporting requirements set out by the Stock Exchange of Hong Kong have been strengthened that, amongst others, listed companies have to disclose policies and compliance with the laws and regulations relating to bribery. Both the Company Ordinance and Stock Exchange Listing Rules require company directors

to exercise reasonable care, skill and diligence and fulfil fiduciary duties in performing their functions and exercising their powers. While these requirements set the basics, the pursuit of ethical governance in the long run rests with directors’ ingenuities. Company directors must assume the leadership role in fostering an ethical culture and practising ethical management. Good governance means good business. The Commission stands ready to partner with company directors in strengthening corporate governance and fostering a sustainable and healthy business environment. 





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個講求公平競爭、廉潔誠信的營商環境，不但能給予投資者信心，也是香港賴以成功的基石。然而，一些上市公司的高層人員或會低估貪污舞弊的風險

，其不但可引致經濟損失，更可能危害公司的長遠利益和持續發展。貪污舞弊的風險存在於日常業務運作（採購、銷售及推廣、會計等），而在公司籌備上市和合併與收購階段時更為顯著。公司董事須履行受信責任保障股東的利益，以合理水平的謹慎態度、應有技能，勤勉行事的責任行使權力。其須恪守高度的個人誠信，實踐有效的管治，帶領公司建立誠信文化。

部分廉署調查涉及上市公司的個案顯示，某些公司董事未能在誠信領導及守護公司利益方面盡其所負的受信責任。在一些極端的個案中，甚至有高層人員參與企業貪污、欺詐及其他不當行為。

貪污破壞守護者角色

在廉署近期完成調查的一宗案件中，一名前上市公司執行董事及另一前財務總監兼公司秘書在出售公司業務的交易中被發現貪污舞弊，以圖掩飾其違反上市規則的行為。

當時，公司計劃出售其附屬公司業務予該前執行董事。然而，財務總監其後獲悉這項交易會構成香港聯合交易所（聯交所）上市規則所指的關連交易，須尋求獨立財務顧問的意見和取得獨立股東的批准，計劃於是被擱置。

翌年，該公司得悉另一獨立第三方提出以1,500萬港元收購有關業務。該項交易被報稱為非關連交易，並在董事會會議上獲得通過。但買家其實是該前執行董事的一名親戚，並在他安排下提出有關收購。為掩飾該項關連交易，該前執行董事更向前財務總監提供市值33萬港元的公司股份，作為對方協助行使虛假陳述的報酬。

該兩名高層人員分別因提供及接受利益，以及串謀使用文件欺騙其主事人，被控違反《防止賄賂條例》（香港法例第201章）。兩人被法庭裁定罪名成立，分別被判入獄兩年及15個月，以及禁止擔任公司董事5至7年。

香港反貪法例

有關私營機構的貪污行為是受《防止賄賂條例》第9條的規管。條例的目的是維護公平的營商環境，並嚴禁代理人以任何行為違反其對主事人的受信責任。《防止賄賂條例》第9(1)條禁止代理人（例如僱員或公司董事）就其主事人的業務索取或接受利益，而第9(2)條則規管向代理人提供利益的行為。第9(3)條亦指明代理人使用文件意圖欺騙主事人，即屬犯罪。

根據該條例，「利益」被界定為任何有價值的東西，但「款待」則不在此列。除現金外，公司股票、可換股債券、顧問職位或其他特別優待也屬「利益」。如觸犯《防止賄賂條例》第9條所訂的罪行，最高刑罰為罰款50萬港元及監禁7年。


上市公司商業道德推廣計劃

為協助公司董事及專業人士掌握他們在上市公司推行良好企業管治及維持誠信文化方面所扮演的重要角色，廉署轄下的香港商業道德發展中心於2015年聯同包括香港董事學會在內的18個合辦機構，展開為期3年的「上市公司商業道德推廣計劃」。

計劃的其中一個項目，是中心製作的一套《符規以外》培訓教材。教材利用個案研究及三輯培訓影片，探討上市公司在日常運作及收購與合併階段所面對的誠信挑戰，並強調公司董事（包括獨立非執行董事）在保障上市公司及股東利益方面所擔當的重要角色，當中亦剖析跨境賄賂、欺詐、利益衝突、借殼上市及內幕交易等問題。教材另載有《董

事誠信實務指南》及《上市公司防貪系統實務指南》等參考資料，讓上市公司管理層瞭解尤需關注的誠信挑戰及其影響。同時，中心為上市公司提供適切的防貪及教育服務，協助加強內部監控及推行道德培訓項目，歡迎上市公司使用有關服務，詳情可瀏覽中心網頁www.hkbedc.icac.hk/lc。

誠信領導的舵能手

自2016年的財政年度起，聯交所加強了對《環境、社會及管治報告》的要求，當中包括規定上市公司須披露與貪污賄賂有關的政策及符規情況。而《公司條例》及聯交所的《上市規則》都同樣規定公司董事須履行受信責任，以合理水平的謹慎、應有技能和勤勉行事的責任，履行職責及行使權力。然而，這些要求只是基本原則，長遠來說，能否持續推行誠信管治仍取決於公司董事的睿智，以及他們能否肩負促進誠信文化和落實誠信管理的責任。良好企業管治有利業務發展。廉署樂意與各公司董事攜手合作，一同加強企業管治，致力促進一個健康及可持續發展的營商環境。 



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